

# Department of State

TELEGRAM

PAGE 01 OF 04 STATE 063508  
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FOR SCIATTS

E.O. 12956: DECL: OADR  
TAGS: TSPA, XT  
SUBJECT: SPACE STATION NEGOTIATIONS: FEBRUARY 25-27  
-- TALKS WITH ESA MEMBER STATES

REF: STATE 33163 (NOTAL)

1. C - ENTIRE TEXT.

2. SUMMARY AND CONCLUSIONS. THREE DAYS OF INTENSIVE TALKS AVERTED A THREATENED COLLAPSE OF NEGOTIATIONS WITH EUROPEAN SPACE AGENCY (ESA) MEMBER STATES ON SPACE STATION COOPERATION. PERCEIVED HARDENING AND LACK OF FLEXIBILITY ON KEY ISSUES IN U.S. DRAFT HAD LED TO UNIFORM VIEW IN EUROPEAN COUNTRIES THAT IN ABSENCE OF SIGNIFICANT PROGRESS AT THIS SESSION THERE WOULD BE RECONSIDERATION OF ESA STATES' ACCEPTANCE OF U.S. PRESIDENT'S OFFER TO COOPERATE ON THIS PROJECT. EUROPEAN SIDE WAS VISIBLY RELIEVED AND REASSURED BY WILLINGNESS OF USDEL TO ENGAGE IN REAL NEGOTIATION ON ISSUES OF MAJOR SUBSTANTIVE CONCERN, SHARPLY IMPROVING PROSPECTS FOR GETTING THE TALKS BACK ON A CONSTRUCTIVE TRACK.

3. AD REFERENDUM AGREEMENT WAS REACHED ON KEY OPENING ARTICLES DESCRIBING PROJECT IN WAY THAT GIVES APPROPRIATE WEIGHT TO INTERNATIONAL CONTRIBUTIONS TO THE PROJECT. EUROPEAN WILLINGNESS TO SHIFT EMPHASIS ON MANAGEMENT TO MOU, AS WE HAD LONG URGED, WAS KEY TO THEIR PROPOSAL ON IGA MANAGEMENT ARTICLE, IN WHICH THEY AGREED TO MAINTAIN CLEAR REFERENCE TO OVERALL NASA MANAGEMENT RESPONSIBILITY. A NUMBER OF OTHER DRAFTING CHANGES WERE AGREED ON IMPORTANT BUT LESS CENTRAL POINTS IN THE COURSE OF THE NEGOTIATIONS.

4. IN PROCEDURAL BREAKTHROUGH, EUROPEANS AGREED TO USE OUR PROPOSED TEXT (REFTEL) AS THE NEGOTIATING DRAFT, WHICH WAS KEY TO PROGRESS THAT WAS ACHIEVED. FULL RUN-THROUGH OF OUR TEXT SERVED TO PLACE IN SHARP FOCUS THE NATURE OF EUROPEAN

CONCERNS. MAJOR REMAINING ISSUES INCLUDE EUROPEAN REQUIREMENT FOR MULTILATERAL GOVERNMENT-LEVEL CONSULTATIVE MECHANISM AND THE ASYMMETRICAL NATIONAL SECURITY/FOREIGN POLICY VETO RIGHTS WE HAVE PROPOSED FOR SPACE STATION ACTIVITIES. FURTHER, THE EUROPEANS EMPHASIZED THAT WHILE THEY ACCEPT U.S. POSITION THAT THE SPACE STATION MAY BE USED FOR NATIONAL SECURITY PURPOSES CONSISTENT WITH THE OUTER SPACE TREATY, EXPLICIT USE OF PHRASE "NATIONAL SECURITY PURPOSES" IN IGA TEXT WOULD CREATE UNMANAGEABLE DOMESTIC POLITICAL PROBLEMS FOR THEM. END SUMMARY/CONCLUSIONS.

5. US REPRESENTATIVES MET IN PARIS (AT ESA HEADQUARTERS) WITH EUROPEAN AND ESA REPRESENTATIVES FEBRUARY 25-27 FOR NEGOTIATIONS ON US-EUROPEAN INTERGOVERNMENTAL SPACE STATION AGREEMENT. U.S. SIDE WAS LED BY RICHARD SMITH, PRINCIPAL DAS (OES), DEPARTMENT OF STATE, AND MARGARET FIMARELLI, DIRECTOR OF POLICY, OFFICE OF SPACE STATION, NASA. EUROPEAN SPOKESMAN WAS REINHARD LOOSCH, BMFT BONN. ON OPENING DAY, SIGNIFICANT PROGRESS WAS MADE BY REACHING AGREEMENT ON A NUMBER OF RELATIVELY MINOR ISSUES, AND A VERY POSITIVE ATMOSPHERE WAS CREATED. ON SECOND DAY, HOWEVER, MAJOR ISSUES EMERGED WHICH RAISED POSSIBILITY OF BREAKDOWN IN NEGOTIATIONS. BY END OF SECOND DAY, BOTH SIDES FELT THAT NEGOTIATIONS HAD REACHED DEADLOCK AND THAT COLLAPSE OF NEGOTIATIONS WAS VERY REAL POSSIBILITY. US REP MADE SUCCESSFUL EFFORT TO TURN SITUATION AROUND ON MORNING OF FINAL DAY, RECAPTURING SENSE THAT USG WAS GENUINELY INTERESTED IN ACHIEVING SUCCESSFUL CONCLUSION OF THESE NEGOTIATIONS.

6. AT OPENING OF FIRST SESSION, HEAD OF U.S. DEL SMITH MADE OPENING STATEMENT WHICH WAS VERY WELL RECEIVED. TEXT FOLLOWS:

BEGIN TEXT.

-- I WANT TO REITERATE WHAT I SAID TO YOU IN WASHINGTON. THE PRESIDENT'S INVITATION TO YOU TO PARTICIPATE WITH US IN A GENUINE PARTNERSHIP TO BUILD AND OPERATE A CIVIL SPACE STATION TO BE USED FOR PEACEFUL PURPOSES STILL STANDS.

-- AS HAS ALWAYS BEEN THE CASE, WE INTEND TO KEEP OPEN THE OPTION TO USE THE STATION FOR NATIONAL SECURITY PURPOSES CONSISTENT WITH OUR COMMITMENTS TO THE PEACEFUL USES OF OUTER SPACE. BUT I WANT TO EMPHASIZE THAT WE HAVE NO INTENT WHATSOEVER TO GIVE THE STATION A MILITARY CHARACTER. IT REMAINS A CIVIL STATION INTENDED TO BE USED PREDOMINATELY BY NON-DEFENSE USERS. (AS NOTED IN WASHINGTON, THE DEPARTMENT OF DEFENSE HAS AS YET FORMULATED NO PLANS TO CONDUCT ACTIVITIES ON THE SPACE STATION.)

-- WE HEARD AND TAKE VERY SERIOUSLY THE CONCERNS THAT OUR PARTNERS RAISED IN WASHINGTON WITH OUR PROPOSED DRAFT OF AN AGREEMENT. WE ARE PREPARED TO PURSUE THOSE CONCERNS WITH YOU THIS WEEK IN PARIS.

-- MY DELEGATION IS HERE TO NEGOTIATE. WE ARE READY TO EXPLORE WITH YOU FORMULATIONS THAT YOU BELIEVE ARE IMPROVEMENTS TO THE PROPOSED DRAFT. I WILL BE PREPARED TO TAKE BACK TO WASHINGTON ON AN AD REFERENDUM BASIS SUCH CHANGES THAT WE CAN AGREE MAKE SENSE AND ARE CONSISTENT WITH MY NEGOTIATING INSTRUCTIONS, WHICH COVER SOME FUNDAMENTAL REQUIREMENTS THAT WE HAVE.

-- BY MID-MARCH WE WILL HAVE MET IN NEGOTIATING SESSIONS WITH ALL OUR SPACE STATION PARTNERS AND BE IN A POSITION TO TAKE ALL THEIR VIEWS INTO ACCOUNT IN REVIEWING OUR PROPOSED TEXTS. END TEXT.

~~CONFIDENTIAL~~

# Department of State

TELEGRAM

PAGE 02 OF 04

7. THE EUROPEANS SUBMITTED PROPOSED CHANGES TO ARTICLES 1 AND 2. THEIR ARTICLE 1 WAS ENTITLED "OBJECT AND SCOPE," BUT DREW FROM U.S. DRAFT ARTICLE 1. THEIR ARTICLE 2 WAS ENTITLED "INTERNATIONAL RIGHTS AND OBLIGATIONS," BUT DREW FROM U.S. DRAFT ARTICLE 2. THEIR DRAFT PROPOSED DROPPING U.S. ARTICLE 1-1 REFERENCE TO THE "CORE U.S. SPACE STATION." THE U.S. POINTED OUT SEVERAL PROBLEMS WITH THE EUROPEAN DRAFT. DURING THE COURSE OF NEGOTIATIONS AD REFERENDUM AGREEMENT WAS REACHED ON A MODIFIED ARTICLE 1 PICKING UP ALL MAJOR POINTS FROM U.S. DRAFT ARTICLE 1 AND ARTICLE 2.1, INCLUDING REFERENCE TO "CORE U.S. SPACE STATION." EUROPEANS ACCEPTED U.S. ARGUMENTS REGARDING U.S. REQUIREMENT TO HAVE ITS MAJOR ROLE IN PROGRAM ACKNOWLEDGED

IN AGREEMENT. AT SAME TIME, TO ACKNOWLEDGE IMPORTANCE OF INTERNATIONAL PARTICIPATION IN FULL SPACE STATION COMPLEX, ADJECTIVE INTERNATIONAL (WITH LOWER CASE "I") WAS INSERTED BEFORE TERM "SPACE STATION COMPLEX." REMAINDER OF U.S. DRAFT ARTICLE 2 WAS AUGMENTED WITH ADDITIONAL SUBPARA; FULL TEXT OF NEW ARTICLE 2 WAS AGREED AD REFERENDUM.

8. THE EUROPEANS ACCEPTED THE U.S. DRAFT ARTICLE 4-1 AND PROPOSED AN ACCEPTABLE MODIFICATION OF ARTICLE 4-2. HOWEVER, THEY PROPOSED DROPPING ARTICLE 4-3 WHICH IS IMPORTANT TO THE U.S. WE HAD INTENDED THROUGH 4-3 TO PREVENT THE OTHER PARTIES FROM ARGUING THAT THE MOU WAS INCONSISTENT WITH THE IGA AND THEREFORE VOID. LOOSCH FOUND ARTICLE 4-3 TROUBLESOME BECAUSE, WHEREAS ARTICLE 4-2 STATES THAT IMPLEMENTING AGREEMENTS WOULD BE SUBJECT TO THE IGA, THE EUROPEAN DELEGATION FELT THE U.S. ARTICLE 4-3 TOOK THAT CONCEPT AWAY. AFTER SOME DISCUSSION LOOSCH SUGGESTED THAT IMPLEMENTING AGENCIES (NASA, ESA) COULD BE GIVEN ORDERS TO MAKE SURE THAT IMPLEMENTING AGREEMENTS ARE CONSISTENT WITH THE IGA. IT WAS AGREED THAT MORE WORK HAD TO BE DONE ON ARTICLE 4-3.

9. THE EUROPEANS INTRODUCED A PROPOSED REWRITE OF ARTICLE 5 ON REGISTRATION, JURISDICTION AND CONTROL WHICH WAS LARGELY ACCEPTABLE TO THE U.S. SIDE. LOOSCH EXPLAINED THAT EUROPE'S RESERVATION ON ARTICLE 5-2 WAS BECAUSE, ALTHOUGH THEY AGREED WITH THE MAIN NOTION OF THIS "HOLD HARMLESS" PROVISION, THE U.S. LANGUAGE MAY BE TOO SWEEPING AND MAY RAISE THE NEED FOR LEGISLATION. (IT WAS LATER EXPLAINED INFORMALLY THAT THE EUROPEANS THOUGHT WE INTENDED TO GET OUT OF LIABILITY DURING THE LAUNCH PHASE, WHICH WAS NOT OUR INTENT.) SMITH AGREED THAT THE LAWYERS SHOULD LOOK AT IT. SMITH MODIFIED EUROPEAN PROPOSAL FOR ARTICLE 5-3, SECURING EUROPEAN AGREEMENT THAT ANY EXERCISE OF JURISDICTION AND CONTROL WILL BE "SUBJECT TO" THE SPACE STATION AGREEMENTS BETWEEN US.

10. LOOSCH EXPLAINED EUROPE'S PROPOSED REDRAFT FOR ARTICLE 6 ON OWNERSHIP OF ELEMENTS AND EQUIPMENT. HE SAID EUROPE WANTED TO DELETE U.S. DRAFT ARTICLE 6-4 BECAUSE IT WAS NOT NEEDED AND ONE COULD NOT SAY THAT ALL ASPECTS ARE COVERED. HE SAID THAT IN ARTICLE 6-1 THE LANGUAGE WAS CHANGED FROM "TRANSFERRED TO A THIRD PARTY" TO "TRANSFERRED TO ANY LEGAL PERSON BEYOND THE JURISDICTION OF A PARTNER" BECAUSE THE CONCERN WAS TRANSFER TO PARTIES OUTSIDE THE AGREEMENT. EUROPEAN PROPOSAL TO DROP ARTICLE 6-4 AS UNNECESSARY WAS REJECTED BY U.S. LANGUAGE PARALLEL TO ARTICLE 5-3 WAS FINALLY ACCEPTED BY THE EUROPEAN DEL. REGARDING ARTICLE 6.1, EUROPEANS PROPOSED THAT TRANSFER OF SPACE STATION

ELEMENTS TO NON-PARTNERS SHOULD BE SUBJECT OF CONSULTATION AND CONCURRENCE OF ALL PARTNERS. ON OTHER HAND, EUROPEANS THOUGHT TRANSFER TO ENTITIES WITHIN A PARTNER'S JURISDICTION (E.G. A PRIVATE SECTOR FIRM) WOULD NOT NEED TO BE ADDRESSED BY THE PARTNERSHIP. U.S. DID NOT ACCEPT EUROPEAN PROPOSAL BUT INDICATED FURTHER CONSIDERATION WAS

NECESSARY.

11. LOOSCH EXPLAINED IN DETAIL THE EUROPEAN PROPOSAL FOR A NEW ARTICLE (6 BIS) CREATING AN "INTERNATIONAL SPACE STATION COUNCIL" (ISSC). LOOSCH SAID EUROPE RECOGNIZED THAT TECHNICAL/PROGRAMMATIC DECISION-MAKING SHOULD BE HANDLED IN TECHNICAL/PROGRAMMATIC MANAGEMENT CHANNELS PROVIDED IN ARTICLE 7. HE EMPHASIZED THAT THE ISSC WAS NOT INTENDED TO BE A MANAGEMENT BODY OR TO INTERFERE IN DAY-TO-DAY MANAGEMENT OF THE PROGRAM OR OF THE STATION. HE FURTHER EXPLAINED EUROPEAN BELIEF THAT THERE EXIST POLITICAL ISSUES WHICH SHOULD BE DECIDED BY CONSENSUS OF ALL GOVERNMENTS PARTICIPATING IN ISSC. SMITH RESPONDED THAT EUROPEAN PROPOSAL (WHICH INCLUDED MANY SPECIFIC AREAS FOR ISSC ACTIVITY INCLUDING THAT ISSC WOULD REVIEW CONSISTENCY OF PARTNERS' ACTIVITIES WITH COMMITMENTS IN AGREEMENT, INCLUDING COMMITMENT TO PEACEFUL USES) WAS "IMPOSSIBLE TO ACCEPT." HE EXPLAINED U.S. VIEW THAT AN INSTITUTIONALIZED MECHANISM MEETING REGULARLY CREATES RATHER THAN SOLVES PROBLEMS AND STATED U.S. VIEW THAT POLITICAL ISSUES, IF THEY WERE TO ARISE, SHOULD BE HANDLED BY AN AD-HOC CONSULTATIVE-TYPE MECHANISM. U.S. DEL COMMITTED TO PROVIDING A PROPOSAL. LOOSCH AND OTHER EUROPEAN DELEGATES ARGUED LONG AND HARD, BOTH IN PLENARY AND IN CORRIDORS, THAT SOME FORM OF GOVERNMENT-LEVEL CONSULTATION MECHANISM IS VIEWED AS ESSENTIAL BY THE EUROPEANS.

12. LOOSCH SAID EUROPE HAD DELETED U.S. ARTICLE 7-1 BECAUSE EUROPE BELIEVES IT OVER-SIMPLIFIES THE QUESTION OF MANAGEMENT CONTROL WHICH IS BETTER HANDLED IN THE MOU WHICH DEALS WITH ALL TECHNICAL/PROGRAMMATIC MANAGEMENT ISSUES IN DETAIL. SMITH SAID WE AGREED THAT THE NEGOTIATION OF MANAGEMENT ARRANGEMENTS SHOULD BE DONE BY THE COOPERATING AGENCIES AND BELONGED IN THE MOU. THE U.S. HAD, IN FACT, LONG PRESSED FOR THAT APPROACH. HOWEVER, USDEL REITERATED OUR VIEW THAT IT WAS IMPORTANT THAT THE OVERALL MANAGEMENT RESPONSIBILITIES OF NASA BE ACKNOWLEDGED IN THE IGA AND SAID THAT THEIR PROPOSAL WOULD BE MUCH MORE INTERESTING IF IT INCLUDED THAT ELEMENT. LOOSCH RESPONDED THAT HE AGREED WITH US ON SUBSTANCE AND THAT SUCH A REFERENCE WOULD BE ACCEPTABLE

CONFIDENTIAL

TO THE EUROPEAN SIDE. ON THAT BASIS, USDEL AGREED THAT, WHILE KEEPING OUR DRAFT ARTICLE 7 ALSO ON THE TABLE, WE WOULD TAKE BACK THEIR PROPOSAL FOR CONSIDERATION.

13. IN DISCUSSION OF MANAGEMENT ARTICLE, US DEL EMPHASIZED THAT ACCEPTANCE OF EUROPEAN APPROACH WOULD NOT IMPLY THAT WE ACCEPTED SPECIFIC EUROPEAN VIEWS ON HOW VARIOUS TECHNICAL/PROGRAMMATIC ISSUES SHOULD BE RESOLVED.

14. FOLLOWING EXTREMELY DIFFICULT SESSIONS ON SECOND DAY DURING WHICH EUROPEANS REPEATEDLY EXPRESSED GRAVE RESERVATIONS ABOUT POSSIBILITY OF US AND EUROPE REACHING A SUCCESSFUL CONCLUSION TO SPACE STATION NEGOTIATIONS, ENTIRE US DEL AGREED THAT SMITH NEEDED TO REAFFIRM IMPORTANCE OF EUROPEAN PARTICIPATION IN PROGRAM TO U.S. IN ORDER TO SET POSITIVE TONE FOR FRIDAY A.M. FINAL SESSION.

15. ON FRIDAY MORNING SMITH OPENED WITH A STATEMENT IN WHICH HE CALLED UPON ALL CONCERNED TO AVOID SEEKING SO MUCH SPECIFICITY IN THE IGA AS TO JEOPARDIZE OUR ABILITY TO CONCLUDE AN AGREEMENT. HE REITERATED THAT A COOPERATIVE AGREEMENT AMONG CLOSE FRIENDS AND ALLIES, SUCH AS THIS ONE, CAN ONLY SUCCEED IF BOTH SIDES ARE WILLING TO TRUST EACH OTHER, AND HE CALLED UPON EVERYONE

CONFIDENTIAL

## Department of State

TELEGRAM

PAGE 03 OF 04

PRESENT NOT TO LET SLIP THIS OPPORTUNITY TO ACHIEVE AN AGREEMENT ON THIS PROJECT. SMITH THEN SAID THAT THE U.S. SIDE NEEDED TO HEAR SPECIFIC EUROPEAN COMMENTS ON THE U.S. DRAFT, PARTICULARLY BEGINNING WITH THOSE ARTICLES FOR WHICH THE EUROPEANS HAD PRESENTED NEW TEXTS ON THURSDAY AFTERNOON.

16. LOOSCH STATED THE VIEW THAT THE IGA SHOULD "SET THE FRAMEWORK" FOR COOPERATION ON THE PROJECT AND "GIVE DIRECTION" FOR THE MOU TALKS, WHICH WOULD HANDLE THE DETAILED ARRANGEMENTS. HE AGREED TO SPEND THE REMAINDER OF THE SESSION ON THE SPECIFIC EUROPEAN COMMENTS ON THE U.S. DRAFT IGA, BEGINNING WITH ARTICLE 8.

17. LOOSCH SAID THAT THE EUROPEANS PROPOSED NO CHANGES IN ARTICLE 8 OF THE U.S. DRAFT ("DETAILED DESIGN AND DEVELOPMENT"), SUBJECT TO SATISFACTORY RESOLUTION OF ARTICLE 7.

18. THE DISCUSSION OF ARTICLE 9 ("UTILIZATION") OCCUPIED MUCH OF THE REMAINDER OF THE SESSION AND TOUCHED UPON THE MAJOR ISSUES REMAINING IN THE NEGOTIATIONS.

(A) LOOSCH SAID THAT PARAGRAPHS 1 AND 2 OF THE ARTICLE CONTAINED NO SERIOUS PROBLEMS FOR THE EUROPEANS.

(B) ACCORDING TO LOOSCH, THE PROVISIONS OF PARAGRAPH 3 WERE TOO EXPLICIT IN REFERRING TO SPECIFIC U.S. AND ESA HARDWARE ELEMENTS. AS A RESULT, IF THE EUROPEAN CONTRIBUTION TO THE STATION COMPLEX WERE TO CHANGE BY THE TIME OF LAUNCH, THOSE CHANGES WOULD HAVE TO BE FACTORED INTO THE SPECIFIC PROVISIONS OF ARTICLE 9. THE SAME WOULD APPLY TO CHANGES DUE TO STATION GROWTH. INSTEAD, THE EUROPEANS SUGGESTED THAT THE IGA SIMPLY RECOGNIZE THE "SPECIAL CONTRIBUTIONS" OF THE U.S. AND CANADA TO THE SPACE STATION COMPLEX, RECOGNIZE THAT THOSE CONTRIBUTIONS DESERVE SPECIAL CONSIDERATION, AND LEAVE THE EXACT NATURE OF THAT CONSIDERATION FOR LATER DECISION.

(C) THERE WAS EXTENDED DISCUSSION OF PARA 5 FOCUSSED ON EXPLICIT REFERENCE TO U.S. ABILITY TO USE STATION FOR ANY PURPOSE "INCLUDING NATIONAL SECURITY PURPOSES." EUROPEAN DELEGATION EXPRESSED STRONG NEED TO ELIMINATE EXPLICIT REFERENCE FROM TEXT WHILE EMPHASIZING THAT PROBLEM WAS NOT SUBSTANTIVE BUT POLITICAL. LOOSCH AND OTHER EUROPEAN DELEGATES MADE CLEAR REPEATEDLY THAT U.S. WOULD USE STATION FOR NATIONAL SECURITY PURPOSES. IN PARTICULAR, THEY NOTED THAT THEY REGARDED APRIL 6, 1984, LETTER FROM THEN NASA ADMINISTRATOR JAMES BEGGS TO ESA DIRECTOR GENERAL AS PUTTING THIS POINT UNAMBIGUOUSLY ON THE RECORD. RELEVANT TEXT OF LETTER FOLLOWS:

"DURING MY TRIP I WAS ALSO ASKED FREQUENTLY ABOUT THE EXTENT OF U.S. MILITARY INVOLVEMENT IN THE U.S. SPACE STATION. THE U.S. SPACE STATION PROGRAM IS A CIVIL PROGRAM WHICH WILL BE FUNDED ENTIRELY OUT OF NASA'S BUDGET, WITH NO NATIONAL SECURITY FUNDS TO BE USED. WHILE THE DEFENSE DEPARTMENT WORKED WITH NASA IN THE EARLY PLANNING FOR SPACE STATION BY REVIEWING THEIR NEAR- AND LONG-TERM REQUIREMENTS FOR SPACE, THEY CONCLUDED THEY HAD NO REQUIREMENTS FOR A MAINED SPACE STATION. NASA, THEREFORE, CONSTRUCTED ITS PROPOSAL TO THE PRESIDENT ON THE BASIS OF CIVIL AND COMMERCIAL REQUIREMENTS. THE SPACE STATION THAT THE PRESIDENT DIRECTED NASA TO BUILD IS A CIVIL SPACE STATION. OF COURSE, LIKE THE SHUTTLE, THE SPACE STATION WILL BE AVAILABLE FOR USERS. IF THERE ARE ANY NATIONAL SECURITY USERS, LIKE NATIONAL AND INTERNATIONAL USERS, THEY WILL BE ABLE TO PAY TO USE THE FACILITY. AS PROVIDED IN THE OUTER SPACE TREATY, HOWEVER, ALL ACTIVITY ON THE SPACE STATION WILL BE

LIMITED TO PEACEFUL, NON-AGGRESSIVE FUNCTIONS."

(D) LOOSCH MADE CLEAR EUROPEAN VIEW THAT ARTICLE 1 STATEMENT THAT STATION MAY BE USED FOR "PEACEFUL PURPOSES IN ACCORDANCE WITH THE OUTER SPACE TREATY" FULLY PROTECTS U.S. ABILITY TO USE STATION FOR ALL NATIONAL SECURITY PURPOSES CONSISTENT WITH OUTER SPACE TREATY. LOOSCH FURTHER NOTED THAT U.S. APPARENT NEED TO HAVE ADDITIONAL SPECIFIC ART. 9 REFERENCE TO NATIONAL SECURITY USE CALLED INTO QUESTION U.S. INTERPRETATION OF OUTER SPACE TREATY SINCE U.S. HAS ALWAYS ASSERTED THAT TREATY ALLOWS NATIONAL SECURITY USE FOR PEACEFUL PURPOSES. LOOSCH RECOGNIZED THAT DIFFERENT SPACE STATION PARTNERS DO INDEED HAVE DIFFERENT INTERPRETATIONS OF OUTER SPACE TREATY, BUT STRESSED THAT SPACE STATION AGREEMENT WAS NOT THE FORUM FOR SEEKING COMMON DEFINITIONS WHICH HAVE ELUDED OUR GOVERNMENTS FOR YEARS.

(E) SMITH PRESSED LOOSCH TO CONFIRM THAT IN EUROPEAN VIEW ELIMINATION OF THE TERM "NATIONAL SECURITY PURPOSES" WOULD NOT CHANGE THEIR ACCEPTANCE OF NATIONAL SECURITY USES OF THE STATION. LOOSCH RESPONDED AFFIRMATIVELY, STATING THAT "OUR OPPOSITION IS NOT TO THE NOTION OF NATIONAL SECURITY USE; THAT USE IS CAPTURED IN ART. 1."

(F) ADDITIONAL DISCUSSION COVERED PARA. 6 NATIONAL SECURITY/FOREIGN POLICY OVERRIDE. LOOSCH EXPRESSED EUROPEAN CONCERN THAT U.S. WOULD USE THIS VETO FOR COMMERCIAL PURPOSES. HE SUGGESTED THAT, AT VERY LEAST, APPROACH ALONG LINES OF LONDON NUCLEAR MATERIALS SUPPLIERS GUIDELINES, I.E., THAT NO PARTY USE VETO TO REAP COMMERCIAL BENEFIT, SHOULD BE INCORPORATED. EUROPEAN CONCERNS, HOWEVER, FOCUSED ON WHAT THEY CALLED THE ASYMMETRY OF THIS APPROACH. UK DELEGATE LEEMING EXPRESSED MOST SERIOUS CONCERNS WITH THIS PROVISION WHICH HE SAID PRIVATELY HAS LED TO DOUBTS AS TO WHETHER UK SHOULD CONTINUE TO PARTICIPATE IN PROGRAM. LOOSCH INDICATED VIEW THAT ALL USES OF STATION SHOULD BE CONSISTENT WITH ARTICLE 1 AND THAT THERE IS NO NEED TO CALL ADDITIONAL REASONS FOR ONE PARTY BEING ABLE TO VETO ANOTHER. SMITH RESPONDED THAT U.S. VIEWED FOREIGN POLICY OVERRIDE AS NECESSARY TO PREVENT USES WHICH MIGHT BE COMPLETELY CONSISTENT WITH ART. 1, BUT WHICH WOULD NONETHELESS POSE FOREIGN POLICY PROBLEMS. HE NOTED THAT THE ASYMMETRY BETWEEN THE U.S. VETO AND THE EUROPEAN VETO REFLECTS THE FUNDAMENTAL DIFFERENCE IN THE NATURE OF OUR CONTRIBUTIONS TO THE SPACE STATION COMPLEX: THE U.S. IS IDENTIFIED WITH THE STATION AS A WHOLE AND MUST PROTECT ITS FOREIGN POLICY INTERESTS THROUGHOUT, WHEREAS EUROPE IS IDENTIFIED WITH ITS SPECIFIC HARDWARE CONTRIBUTION AND

IS ABLE TO PROTECT ITS FOREIGN POLICY INTERESTS THERE. EUROPEANS SAID THEY UNDERSTOOD THAT WE WERE RAISING A REAL ISSUE, BUT AGAIN EMPHASIZED THEIR REQUIREMENT FOR MORE DELICATE HANDLING OF THIS POLITICALLY-HIGHLY SENSITIVE ISSUE.

(G) EUROPEAN DRAFT PROPOSAL FOR ARTICLE 9 CONTAINED TWO ELEMENTS NOT IN U.S. DRAFT. FIRST ELEMENT WOULD PROVIDE ACCESS FOR ALL PARTNERS TO ALL ELEMENTS OF THE STATION, CONSISTENT WITH UTILIZATION RESOURCE ALLOCATIONS. SECOND ELEMENT WOULD COVER ALLOCATION OF UTILIZATION RESOURCES. U.S. SIDE AGREED TO CONSIDER THESE PROPOSALS.

19. AT THIS POINT, LOOSCH TURNED TO ARTICLE 10 OF THE U.S. DRAFT ("OPERATION"). HE SAID PARA 1 IS BASICALLY IN LINE WITH EUROPEAN THINKING, BUT IN ADDITION EUROPE WOULD WANT TO STATE MORE CLEARLY HOW WE SHARE RESPONSIBILITIES. HE SAID THAT THE BASIC APPROACH OF PARA 2 IS FINE, BUT THE EUROPEANS WANT TO WAIT UNTIL THE MOU IS FURTHER

CONFIDENTIAL

CONFIDENTIAL

## Department of State

TELEGRAM

PAGE 04 OF 04

DEVELOPED BEFORE COMMENTING FURTHER ON THAT PARAGRAPH. PARAGRAPH 3 IS FULLY AGREEABLE AS IT NOW STANDS.

20. ON ARTICLE 11 ("SAFETY"), LOOSCH SAID THE EUROPEANS HAVE SOME OBSERVATIONS THAT ARE COMMON TO THIS ARTICLE AND ARTICLES 12 AND 13 ON "CREW" AND "CREW OPERATING PROCEDURES." THEY RECOGNIZE THAT ALL THREE SUBJECTS MUST BE COVERED IN THE TEXT. LOOSCH ALSO NOTED THAT NASA'S EXPERIENCE WILL BE "CRITICAL" IN SETTING UP CRITERIA IN ALL THREE AREAS AND ACKNOWLEDGED NASA'S MANAGERIAL RESPONSIBILITIES. NEVERTHELESS, THE EUROPEANS WANT TO BE ABLE TO AGREE TO THE CRITERIA AND REQUIREMENTS.

21. NASA REP CONCURRED IN EUROPEAN APPROACH THAT, AS WITH MANAGEMENT ARTICLE, THE IGA SHOULD OUTLINE GENERAL PRINCIPLES, WHILE DETAILS ARE DEVELOPED IN THE MOU. SHE NOTED THAT THE ARTICLE INCLUDES PROVISIONS ACKNOWLEDGING THAT A SPECIFIC AMOUNT OF CREW TIME WOULD BE ALLOCATED FOR EUROPEAN CREW MEMBERS, AS IS ALREADY UNDERSTOOD BETWEEN NASA AND ESA.

22. ON ARTICLE 14 ("TRANSPORTATION"), LOOSCH SAID THE EUROPEANS HAD NOTED THAT THE U.S. TEXT IN PARA 1 HAD SHIFTED THE ROLE OF THE SHUTTLE FROM THE "PRIMARY" TRANSPORTATION SYSTEM TO A "BASELINE" SYSTEM IN FIGURING COMPATIBILITY. HOWEVER, THE EUROPEANS BELIEVE THAT ALL PARTNERS SHOULD BE FREE TO USE THEIR OWN TRANSPORTATION SYSTEMS, AND SHOULD HAVE ACCESS TO THE STATION. ACCORDINGLY, THEY BELIEVE THAT ALL PARTNERS SHOULD MAKE

## CONFIDENTIAL

ADJUSTMENTS IN ORDER TO PROVIDE FOR "COMPATIBILITY" WITH THE STATION, EVEN IF THIS MEANS THAT CHANGES MUST BE MADE TO THE WAY THE STATION IS DESIGNED RATHER THAN DESIGNING THE STATION SOLELY FOR COMPATIBILITY TO THE U.S. SHUTTLE. NASA REP NOTED THAT NASA HAD LONG AGREED AND MADE CLEAR TO EUROPEANS THAT THEY WOULD BE ABLE TO USE ARIANE IN CONNECTION WITH THE STATION AND THAT NASA WOULD WORK WITH ESA TO PERMIT THEM TO MAKE ARIANE COMPATIBLE WITH THE STATION.

23. LOOSCH PROPOSED THAT U.S. COMMITMENT TO PROVIDE LAUNCH SERVICES IN PARA 2 SHOULD BE RECIPROCAL. REGARDING SHUTTLE SERVICES PRICING, LOOSCH PROPOSED A "MOST FAVORED CLASS OF USER" BECAUSE DOD AS A SHUTTLE CUSTOMER GETS MOST FAVORABLE PRICE, REFLECTING ITS EARLY CONTRIBUTIONS TO SHUTTLE DEVELOPMENT. U.S. POLICY ON SHUTTLE PRICING PROVIDES FOR USERS BEING CHARGED ON SAME BASIS AS COMPARABLE USERS OUTSIDE OF USG. USDEL ACKNOWLEDGED THAT INTENT OF THIS PARA SHOULD BE MADE CLEARER.

24. ARTICLE 15 (COMMUNICATIONS). LOOSCH EXPRESSED SOME CONCERN ABOUT THE REFERENCE TO "NASA FOLLOW ON SYSTEMS" IN THE TEXT, SUGGESTING THAT THIS CLAUSE BE DELETED.

25. LOOSCH MADE ONLY GENERAL COMMENTS ON THE ABSENT ARTICLE 16 ON "EVOLUTION" EXCEPT TO SAY THAT GROWTH SHOULD BE SUBJECT TO ARTICLE 1 AND THAT PROPOSALS FOR GROWTH SHOULD BE SUBMITTED TO PARTNERS FOR REVIEW TO ENSURE THAT THE INTERESTS OF THE PARTNERS ARE NOT NEGATIVELY IMPACTED AND TO MAXIMIZE THE CHANCES THAT FUTURE GROWTH MIGHT BE EFFECTED VIA CONTRIBUTIONS FROM ALL THE PARTNERS.

26. ON FUNDING (ART 17), LOOSCH ASKED WHETHER IT WOULD BE POSSIBLE TO STRENGTHEN THE CONSULTING PROVISION. UK REP (AUST) SUGGESTED LANGUAGE IN WHICH PARTIES WOULD "SEEK TO" OBTAIN MULTIYEAR APPROPRIATIONS FOR THE PROGRAM. SMITH NOTED MAJOR LEGAL/CONSTITUTIONAL

RESTRAINTS ON U.S., IN PARTICULAR THE ANNUAL APPROPRIATIONS PROCESS.

27. LOOSCH MADE NO COMMENT ON LIABILITY ARTICLE (ART 18) EXCEPT TO NOTE THAT THIS ARTICLE NEEDS TO BE ADDRESSED IDENTICALLY IN THE AGREEMENTS WITH ALL THE PARTNERS, THAT THE ARTICLE ESTABLISHES RIGHTS AND OBLIGATIONS OF ALL PARTNERS, AND THAT IT MIGHT BE NECESSARY TO ADD A PROVISION WHICH MAKES CROSS LINK TO A MULTILATERAL PROTOCOL.

28. ON ARTICLE 19, LOOSCH NOTED THAT EC HAD A ROLE IN EUROPEAN CUSTOMS AND IMMIGRATION AND IT WOULD BE NECESSARY TO ACCOMMODATE THIS IN REFERENCES TO NATIONAL LAWS IN THIS ARTICLE. HE SUGGESTED THAT PHRASE OFTEN USED IN EUROPEAN DOCUMENTS WAS "LAWS AND REGULATIONS VALID IN THE PARTNER COUNTRIES." UK REP ASKED ABOUT ROLE OF US STATES (E.G. FLORIDA, TEXAS) REGARDING CUSTOMS, TAXES, ETC. U.S. DEL PROMISED TO LOOK INTO THIS.

29. LOOSCH HAD NO COMMENT ON ARTICLE ON EXCHANGE OF DATA AND GOODS (ART 20). ON CONSULTATIONS (ART 21), HE NOTED ONLY EUROPE'S STRONG DESIRE FOR A "STANDING BODY" FOR CONSULTATIONS; HE ALSO NOTED EUROPEAN CONCERNS ABOUT THE CONSPICUOUSLY MISSING ARBITRATION ARTICLE. REGARDING ENTRY INTO FORCE (ART 22), HE EXPRESSED RESERVATIONS ABOUT THE US-PROPOSED TWO-STAGE APPROACH. HE SUGGESTED CONSIDERATION OF PROVISIONAL APPLICATION OF CERTAIN ARTICLES. LOOSCH HAD NO COMMENTS ON ARTICLES 23, 24, AND 25.

30. ON WITHDRAWAL (ART 26), LOOSCH SUGGESTED IN GENERAL TERMS AN APPROACH WHICH WOULD PROHIBIT WITHDRAWAL FOR AT LEAST THE EARLY YEARS OF THE PROGRAM AND PERHAPS AS LONG AS UNTIL ALL SPACE STATION ELEMENTS ARE IN ORBIT. HE NOTED THAT ONCE ALL HARDWARE IS LAUNCHED, A PARTNER'S WITHDRAWAL WOULD NOT IMPOSE SUCH AN IMPACT ON THE PARTNERSHIP (IMPLYING THAT THE INTERNAL EUROPEAN POSITION IS THAT THEY WOULD LEAVE THEIR COLUMBUS MODULE ATTACHED TO THE MANNED BASE EVEN IF THEY WITHDRAW FROM THE PROGRAM.)

31. IN CLOSING, SMITH NOTED USEFULNESS OF EUROPEAN DISCUSSION OF U.S. DRAFT TEXT, CITING THAT IT WAS CRITICAL TO UNDERSTAND EUROPEAN CONCERNS IN ORDER TO ADDRESS THEM IN U.S. PREPARATION OF NEXT DRAFT. SMITH EMPHASIZED THAT U.S. CANNOT NECESSARILY ACCOMMODATE ALL EUROPEAN CONCERNS AND POINTED OUT THAT U.S. PROPOSAL REFLECTS CAREFULLY CONSIDERED POSITIONS OF THE USG AS A WHOLE. ON OTHER HAND, HE NOTED HIS BELIEF THAT THERE ARE MANY AREAS WHERE WE HAVE SUBSTANTIVE AGREEMENT, IF NOT AGREEMENT ON WORDS.

32. AT END OF MEETING, THE TWO SIDES AGREED TO MEET AGAIN FOR ANOTHER ROUND OF NEGOTIATIONS IN WASHINGTON, PROBABLY EARLY IN APRIL. WHITEHEAD

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